IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1483 OF 2002

Asrar Ahmed. ...Petitioner.

Versus

The State of Maharashtra & Ors. ...Respondents.

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Mr.Shyam Mehta i/b. Madekar & Co. for the Petitioner.

Mr. A.G. Damle for Respondent No.4.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

13th January 2005.

**P.C.:**

This Writ Petition is directed against an order passed by the Special Land Acquisition Officer, Mumbai Repair Board on 12th May 1999 declining to accede to a proposal for the acquisition of land

under Section 93(5) of the Maharashtra Housing and Area Development Act,1976 ("the Act").

2. The building in question is known as "Gulab Building" and is situated at Ebrahim Rahimtulla Road, Mumbai-400 003. The Building was constructed prior to 1st September 1940 and, therefore, it is a category "A" cessed building. The building consists of a ground floor and four upper floors and is constructed with wooden beams and columns. The Petitioner who is a monthly tenant in respect of a shop situated in the building and other occupiers, proposed to form a Co-operative Society and the Petitioner was appointed as Chief Promoter. According to the Petitioner, there are 59 tenants, of which 35 are residential and 24 are non-residential. On 7th August 1996, a proposal was submitted under Section 103-B of the Act allegedly by 55 out of 59 occupiers. On an inspection, the Executive Engineer came to the conclusion on 2nd January 1997 that the building did not require any structural repairs and he informed the Petitioner of his opinion on 11th May 1997. The Petitioner sought an administrative

review by the Chief Engineer. Thereupon, the building was inspected on 13th November 1997 by the Deputy Chief Engineer and the Executive Engineer. The report concluded that the building needed structural repairs. Thereafter, another inspection was carried out on 5th March 1998. The conclusion in the aforesaid report was that the building needed structural repairs and that the proposal for acquisition under Section 103-B of the Act made by the tenants was reasonable. The material part of the report reads thus:

> "The Chief Engineer and the Dy.Chief Engineer inspected the building along with the tenants on 13-11-1997. During the inspection the tenants complained about the cracks in the walls of the Building and about the decay of the parts of the Building on account of seepage and water leakages. The following defects were observed during the inspection :-
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> 1) Cracks have developed in the walls of Room Nos.17, 34, 43, 44, 46.
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> 2) Decay of wooden pillars in Room Nos.49 & 43.
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> 3) Water leakages on the walls as a result of which peeling of plaster in Room Nos. 10 & 47.
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> 4) Water leakages for drainage pipes as a result of which damages of parts of Building.

> The Building is of ground plus four floors with load bearing walls, wooden pillars and beams with mangalore tiles. Considering the above necessary repairs required at present, it is seen that the Building requires structural repairs. On reconsideration, the proposal of acquisition under Section 103-B of the Act made by the tenants of the Building is reasonable. The observations of the Chief Engineer along with photographs of the Building are submitted for necessary action."

3. This report of the Executive Engineer was concurred with by the Deputy Chief Engineer of the Repairs and Reconstruction Board who found that there were cracks in the wooden beams and joints in the rooms on the fourth floor, wide cracks in the front portion of some of the rooms of the building and that some part of the walls of the building required strengthening. Accordingly a proposal was sent to the Government on 15th May 1998 by the Maharashtra Housing and Area Development Authority for approval. The Government passed a resolution dated 3rd August 1998 by which it came to the conclusion that acquisition proceedings should be initiated for better maintenance, repairs and preservation of the building. Thereupon, a proposal was forwarded to the Special Land Acquisition Officer who

issued a notice under Section 103-B read with sub-section (4) of Section 93 of the Act. The landlord filed his objections inter alia contending that the proposal was not supported by 70% of the occupiers and that the building was not in need of structural repair. The Petitioner resisted the objections of the landlord and besides relying upon the earlier reports of 13th November 1997 and 5th March 1998, submitted a report of his own Architect which referred to the alarming situation in respect of the structure of the building.

4. Eventually, the Special Land Acquisition Officer by the impugned order dated 12th May 1999 declined to accede to the proposal for acquisition. The Special Land Acquisition Officer in his decision has come to the conclusion that the report of the Executive Engineer was of a routine nature and that he had failed to point out specifically whether structural repairs are necessary for better preservation. The 'necessary tests' which are required to be carried out to substantiate the report were not found to have been carried out by the Executive Engineer. The SLAO noted that the owner had filed

an Architect's report in support of his contention that such type of structural repair is not necessary for better preservation. The order then holds that though the Executive Engineer in the first report was of the view that there was no need to acquire the building, again on a second application dated 16th September 1997, the building was inspected on 13th November 1997 again by the same Executive Engineer and it was observed that acquisition was necessary. The Special Land Acquisition Officer was of the view that it was difficult to comprehend as to how there was a change of circumstances within a short span of time and that it would appear that the report of the Executive Engineer was not entirely an independent report. These reasons have weighed with the Special Land Acquisition Officer in rejecting the proposal. The question as to whether the proposal was supported by 70% of the occupiers, was not determined in view of the finding that structural repairs were not necessary for the better preservation of the structure.

5. Counsel appearing on behalf of the Petitioner has

submitted that the Special Land Acquisition Officer is not correct in criticizing the report of the Executive Engineer. First, the earlier report dated 2nd January 1997 was not by the same Executive Engineer, and the subsequent report at Exh.A to the Petition specifically refers to the earlier report having been prepared by the then Executive Engineer. Furthermore, it is submitted that this report was concurred in by the Deputy Chief Engineer and both these authorities had noticed that the building had wooden beams which had been damaged. Moreover, cracks had been noticed in the walls. Moreover, it is sought to be urged that since the Housing Board as well as the State Government were of the view that the proposal was in order, the SLAO did not have jurisdiction to hold otherwise.

6. The submission of the Petitioner that the SLAO does not possess jurisdiction to decline to accede to the proposal for acquisition has no merit. Under Section 103-B(2) of the Act, the Board has, upon verification and scrutiny, to consider whether a proposal for acquisition should be approved, that is to say, whether it is in the

interests of the better preservation of the building or necessary for the reconstruction of a new building. Thereupon the proposal is forwarded to the State Government which upon finding that it is reasonable, may approve the proposal under sub-section (4). Thereafter under sub-section (5) it is to be forwarded by the Board to the Land Acquisition Officer for initiating acquisition proceedings in accordance with the provisions of sub-sections (3), (4) and (5) of Section 93 and Section 96 of the Act. A detailed procedure thereupon is prescribed by Section 93. Under sub-section (3) of Section 93, the Land Acquisition Officer upon receipt of the acquisition proposal from the Board has to publish the proposal in the manner laid down therein. Under sub-section (4) notice has to be served on the occupiers and the owner and on every mortgagee and the opportunity has to be furnished to them to submit their objections and suggestions. Thereafter, under sub-section (5) of Section 93 on considering the objections and suggestions and on giving a reasonable opportunity of being heard to the persons affected by the proposal, the Land Acquisition Officer may sanction the proposal with

or without any modification and shall publish a notification in in the official gazette fixing a date on which the proposal shall become operative. The land specified therein, shall on and from the date of such publication vest absolutely in the Board on behalf of the Authority free from all encumbrances. The provisions of Section 93 therefore, positively demonstrate that the Land Acquisition Officer is not bound to approve the proposal merely because the proposal has emanated from the Board or because it has been approved by the Government. Upon the approval of the proposal by the Government under Section 103-B(5), it has to be forwarded to the Land Acquisition Officer for initiating acquisition proceedings. At that stage, the owner, occupiers and mortgagees have a statutorily recognised right to submit objections and suggestions. The Land Acquisition Officer is bound to consider objections and suggestions that he receives and may sanction the proposal with or without modification. The word “may” connotes that the Land Acquisition Officer is not bound in law to sanction the proposal for acquisition.

7. In so far as the merits of the case are concerned, there is some substance in the submission of the Petitioner that the SLAO was not correct in criticizing the officials of the Board. The SLAO observed that the earlier report was of the same Deputy Chief Engineer. That does not appear to be correct because the subsequent report at Exh.A clearly refers to the earlier report as that of the then Executive Engineer. Be that as it may, the real question for consideration is as to whether the proposal for acquisition was within the purview of Chapter VIIIA. The acquisition would have to be demonstrated to be in the interest of the better preservation of the building. Since over five years have now elapsed, since the passing of the order dated 12th May 1999 of the SLAO, the nature of the deficiencies in the structure which have been found in the report of the Executive Engineer and which report has been concurred with by the Deputy Chief Engineer cannot lightly be brushed aside. A fresh evaluation of the status of the building should in my view be carried out by the competent authority of the Mumbai Repairs and Reconstruction Board. Once that is done, that would enable the

SLAO to have material before him to indicate the status of preservation of the building and its structure so that he could arrive at a decision as to whether the proposal for acquisition should be allowed. The SLAO must also apply his mind to all the relevant aspects that are required to be taken into consideration by him under the statute including the question as to whether the proposal is supported by 70% of the occupiers.

8. In the circumstances, the following directions are issued:

(i) The Chief Engineer of the Mumbai Repairs and Reconstruction Board shall within a period of 8 weeks from today cause a fresh inspection to be carried out of the building in question viz., Gulab Building, situated at 269-279 Ebrahim Rahimtulla Road, Mumbai-400 003 by a Competent Officer subject to his control with prior notice to the Fourth Respondent and the occupiers including the Petitioner;

(ii) The Competent Officer shall prepare his report within a period of four weeks of the date of inspection and shall furnish copies thereof to the Petitioner on behalf of the occupiers, to the Fourth Respondent and forward the report to the SLAO;

(iii) The SLAO shall thereupon issue fresh notice to the parties in order to furnish them an opportunity of filing their objections to the report, if any, and making their objections in regard to the proposal for acquisition;

(iv) Parties will be at liberty to produce such material as they deem fit before the SLAO.

(v) The SLAO shall thereupon arrive at a decision afresh and in accordance with law without having regard to the impugned order dated 12th May 1999;

(vi) In order to facilitate a fresh decision by the SLAO, the

impugned order dated 12th May 1999 is quashed and set aside; and

(vii) The SLAO shall decide the matter expeditiously and preferably on or before 30th June 2005.

9. The Petition shall stand disposed of in these terms. There shall be no order as to costs.

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